IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1955 OF 2007

Shri.Madhav Ramkrishna Punekar. ...Applicant.
Versus
Central Bureau of Investigation
A.C.B., Mumbai. ...Respondent.

....

Mr.D.R.Punekar, Advocate for the Applicant.
Mr.V.B.Konde-Deshmukh, APP, for State.
Mr.S.Bhattacharji, Special P.P., for respondent-C.B.I.

....

CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 19th June, 2007.

P.C.:

1. Heard the learned Advocate for the Applicant, the learned Special Public Prosecutor for respondent - C.B.I. and the learned APP for the State.

2. The applicant-orig.accused has made various prayers in the present application. One of the prayers was transfer of the case from the Court where the trial is going on at present. As the work pertaining to applications for transfer of cases has not been assigned to this Court, I am not inclined to entertain the said prayer. However, liberty is given to the applicant to prefer separate application for transfer of the said case before the appropriate Court.

3. The second prayer of the applicant is that the proclamation order No.4263 dated 26th February, 2007 which has been issued against the applicant by the Special Court may be quashed. As far as this prayer is concerned, it is always open to the applicant to approach the said Special Court for setting aside said proclamation. Liberty is granted to the applicant to prefer an application for setting aside the said proclamation order before the Special Court. To enable the applicant to prefer the said application the proclamation order is stayed for a period of three weeks from today. On the said application being preferred the learned Special Judge after hearing necessary parties shall dispose of the said application in accordance with law.

4. The third prayer which has been made by the applicant is the prayer for bail. The applicant is facing prosecution under the Prevention of Corruption Act for demanding Rs.26,000/-. The applicant was earlier granted bail in the said case. However, thereafter on 17.1.2007, the applicant remained absent before the trial Court and his advocate submitted that he has no instructions from the applicant and that the advocate could not establish

any contact with the applicant. In view of this statement, NBW came to be issued against the applicant and the case was adjourned to 7th February, 2007. Thereafter the matter was adjourned to 22nd February, 2007. The accused could not be traced till 22nd February, 2007, hence on 22nd February, 2007 proclamation came to be issued against the applicant and notice was also issued to his surety. The matter was adjourned to 3rd April, 2007. On 3rd April, 2007 penalty came to be imposed on the surety as he could not produce the accused i.e. present applicant and surety came to be discharged after depositing the penalty amount. Thereafter the applicant was traced and taken into custody. Hence, the applicant is seeking bail.

5. As far as prayer for return of amount of penalty which was levied on the surety and in respect of forfeiture of security amount, I am not inclined to grant the said prayer, as the surety failed to produce the applicant.

6. The learned Counsel for the C.B.I. submitted that the applicant was absconding since July, 2006. Hence if the applicant is released on bail, he will abscond. He further submitted that the trial is

going on and it would be over within a short time, hence the applicant may not be released on bail.

7. However, looking to the Rozanama it cannot be said that the applicant was absconding since July, 2006 as the Rozanama shows that on 23.8.2006, 25.8.2006, 7.9.2006, 5.10.2006, 10.11.2006, 5.12.2006 and 19.12.2006 exemption applications were preferred on behalf of the applicant and the said applications were allowed by the Court. In such case, it cannot be said that the applicant was absconding till 17.1.2007. on 17.1.2007, the applicant remained absent before the trial Court and his advocate submitted that he has no instructions from the applicant and that the advocate could not establish any contact with the applicant. In view of this statement, NBW came to be issued against the applicant and the case was adjourned. The accused could not be traced till 22nd February, 2007, hence on 22nd February, 2007 proclamation came to be issued against the applicant and notice was also issued to his surety. Thereafter the applicant was traced and taken into custody. Thus, it is only after 17.1.2007 that the applicant can be said to be not available. Moreover, the applicant came to be arrested in Nagpur itself, i.e. at his usual place of residence. The

applicant had gone to his native place for sometime, hence he was not available and there was communication gap with his advocate which resulted in the advocate making the said statement before the Court. Looking to all these facts, I am inclined to grant temporary bail to the applicant.

8. The applicant - Madhav Ramkrishna Punekar to be released on bail in the sum of Rs.30,000/- with one or two surety to make up the said amount for a temporary period of three weeks from today. The applicant shall report to the concerned CBI, ACB Office, everyday at 9:30 a.m. during the period that he is on bail. In addition to this he shall attend the Court on every Court date. On the applicant failing to do so, this temporary bail granted to the applicant shall automatically cancelled and the applicant can be taken into custody.

9. Application is disposed of accordingly.

(SMT.V.K.TAHILRAMANI,J.)